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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff/Respondent,

No. CR 11-97 CRB

v.

ORDER ON LIMITED REMAND

CUONG MACH BINH TIEU,
Defendant/Petitioner.

On April 25, 2016, the Ninth Circuit remanded this case to this Court for the limited purpose of determining whether Petitioner Cuong Mach Binh Tieu's March 10, 2016 Notice of Appeal (dkt. 791) is a timely motion to reopen pursuant to Federal Rule of Appellate Procedure 4(a)(6), and, if not, whether it is nonetheless timely because this Court did not enter a separate judgment under Rule 58(a). See USCA Order (dkt. 795).

This Court finds that the Notice of Appeal is not a timely motion to reopen, as the Court served the Court's December 4, 2015 final order on January 27, 2016, and Tieu did not file his Notice of Appeal until about six weeks later. See Fed. R. App. 4(a)(6). Nonetheless, the Court finds that the Notice of Appeal is timely. The Court's December 4, 2015 final order suggested that a separate judgment was forthcoming under Rule 58, but none was. See Order re 2255 (dkt. 786) at 12. Under the circumstances, Tieu had 150 days to appeal, and his Notice of Appeal was filed within those 150 days. See Peng v. Penghu, 335 F.3d 970,

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1 975 & n.4 (9th Cir. 2003); Notice of Appeal.

2 **IT IS SO ORDERED.**

3 Dated: April 26, 2016

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE